IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

MACA.No. 337 of 2007()

OPMV.259/2004 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
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APPELLANT/PETITIONER:

SAIDALI HAJI, AGED 70 YEARS,
S/O.KUNHASSAN, PADATH PEEDIKEKKAL HOUSE,
ATHAVANAD P.O., TIRUR TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.PROMY KAPRAKKATT
SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SMT.P.K.BEENA

RESPONDENTS:
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1. ABILASH, S/O.LATHIKA,
CHAKKANATH HOUSE, KURUMBATHOOR P.O.,
THIRUNAVAYA. (DRIVER CUM OWNER).

2. CHOLAMANDALAM MS GENERAL INSURANCE
CO.LTD., DARE HOUSE, 2ND FLOOR,
OLD NO.234, NEW NO.2 NSC BOSE ROAD,
CHENNAI (INSURER).

BY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 2/03/2007, THE COURT ON 12/03/2007 DELIVERED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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M.A.C.A.No.337 of 2007
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Dated this the day of March, 2007.

JUDGMENT

Raman,J.

The claimant in OPMV No.259 of 2004 is the appellant before us. The application was filed under Section 166 of the Motor Vehicles Act. The case of the appellant was that on 15.4.2004 the appellant was standing on the side of the road at Puthanathani and at about 11 a.m.,when a motor cycle bearing registration No.KL-1OS-1436, driven and owned by the first respondent and insured with the second respondent came in a rash and negligent manner hit the appellant as a result of which he sustained injuries in the accident. He sustained fracture of the shaft of the right femur. He was admitted in the hospital from 15.4.2004 to 24.4.2004. Though the fracture was united by the treatment, there is shortening of the right femur by 1.5 cms. and there is restriction of the rotation of the right hip by 15% and of lower limb by 10% and he has sustained a permanent disability of 6%. He claimed an amount of Rs.2 lakhs by way of compensation. The Tribunal found that the accident was as a result of the negligence of the first respondent – driver. It then proceeded to assess the

compensation to be awarded.

2. Ext.A2 is the wound certificate issued from the hospital where the appellant was treated. It shows that the appellant had sustained fracture of shaft of right femur. Ext.A5 is the discharge card, which shows that the appellant was admitted in the hospital on 15.4.2004 and that he was discharged on 24.4.2004. Ext.A4 series bills produced shows that an amount of Rs.37,000/- was spent for the treatment of the appellant. The appellant was aged 68 at the time of the accident. There was no evidence to prove his income. Ext.A6 is the disability certificate, which shows that the fracture sustained by the appellant is united but there is shortening by the right femur by 1.5 cms. and there is restriction of the rotation of the right hip of the appellant and that he has sustained 6% permanent disability. The notional income of the appellant was taken as Rs.2,500/- per month and a compensation of Rs.9,000/- was awarded for permanent disability accepting the medical certificate and assessing the permanent disability at 6%. He was also awarded compensation towards transport to hospital, damage to clothing, expenses of bystander respectively at Rs.1,500/-, 500/- and Rs.1,000/-. An amount of Rs.37,000/- was awarded towards medical expenditure as proved by the bills. Compensation for extra nourishment, an amount of R1,000/- was awarded and for pain and

suffering an amount of Rs.12,000/- was awarded. Thus a total amount of Rs.62,000/- was awarded towards compensation under different heads. Interest at the rate of 6% per annum was also awarded from the date of petition till the date of realisation. An amount of Rs.1,000/- was awarded towards costs.

3. Even though the appellant contended that the compensation awarded is too low, we are unable to accept the same. Compensation was awarded towards permanent disability accepting the medical certificate. Likewise the medical expenditure was also awarded based on the medical bills produced by the appellant and reasonable compensation has been awarded under each and every head. We do not find that the award suffers from any infirmity. It cannot be said in the circumstances that the compensation awarded is too low.

We see no merits in the appeal and the same is dismissed.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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